SUPREME COURT, U. S.

FILED

APR 5 1968

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968

No. [redacted] 42

FRED L. SHUTTLESWORTH,

Petitioner,

vs.

CITY OF BIRMINGHAM, ALABAMA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

J. M. BRECKENRIDGE,
EARL McBEE,
WILLIAM C. WALKER,
600 City Hall,
Birmingham, Alabama 35203,
Attorneys for Respondent.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St., 63101. CEntral 1-4477.

INDEX.

	Page
Statement in opposition to jurisdiction of the Court ..	1
Statement in opposition to questions presented	1
Statement of case	2
Statement of relevant facts	4
Argument	6
Introductory statement	6
I. There is no conflict between Walker, et al v. City of Birmingham, 388 U.S. 307, and Cox v. New Hampshire, 312 U.S. 569, as opposed to Lovell v. Griffin, 303 U.S. 444, and Staub v. Baxley, 355 U.S. 313. The Alabama Supreme Court did not mis-apply or wrongly rely upon the Walker case in its decision here. This Court did not overlook Staub-Lovell when deciding Walker	7
A. Pure speech cases not here applicable	7
B. Alabama Supreme Court properly followed Walker and Cox	8
C. The New Hampshire Cox cases (a comparison with this case)	15
D. Section 1159 is valid on its face	20
II. There is no merit in the petition for certiorari on the claim of conflict with Bouie v. Columbia, 378 U.S. 347 (1964), because of petitioner's contention he had no fair warning he was required to secure a parade permit (A) because of the alleged teachings of prior decisions of this Court, and (B) because he only participated in a peaceful, orderly and unobstructive walk along the sidewalks of Birmingham	24

A. Petitioner had fair warning that he would be punished when he violated Section 1159 .. 24

B. Petitioner's conduct was a violation of Section 1159; Bouie v. Columbia is not involved 29

Conclusion 32

Cases Cited.

Bouie v. Columbia, 378 U.S. 347 (1964) 6, 29

City of Darlington v. Stanley, 239 So. C. 139, 122 S.E. 2d 207 22

Cox v. New Hampshire, 312 U.S. 569 (1941) 6, 9, 10, 14, 15, 17, 19, 22, 24, 27, 30

Cox v. State of Louisiana, 379 U.S. 536, 558 ...10, 13, 18, 27

Kelly v. Page, 335 F. 2d 114 (U.S. Ct. of Appeals-5th Circuit) 30

Lovell v. Griffin, 303 U.S. 444 (1938) 6, 8, 11, 27

Poulos v. State of New Hampshire, 345 U.S. 398, 73 S.Ct. 760 .....14, 23, 25, 27

Shirey v. City Board of Education of Fort Payne, 266 Ala. 185, 94 So. 2d 758 23

Shuttlesworth v. City of Birmingham, 206 So. 2d 348, decided November 9, 1967 2

Shuttlesworth v. City of Birmingham, 43 Ala. App. 68, 180 So. 2d 114 (1965) 2, 10, 20

Shuttlesworth v. City of Birmingham, 382 U.S. 87, 91, 86 S.Ct. 212, 213 29

Smith v. Cahoon, 283 U.S. 553, 51 S.Ct. 582 31

State v. Cox, 16 A. 2d 508 .....15, 16, 21

Staub v. Baxley, 335 U.S. 313 (1958) 6, 7, 8, 11

Walker v. City of Birmingham, 388 U.S. 307, 87 S.Ct. 1824 .....4, 5, 6, 7, 10, 11, 13, 14, 16, 17 19, 22, 23, 25, 27, 28, 29, 30, 31

Winters v. State of New York, 333 U.S. 507, 514, 68 S.Ct. 665, 669, 92 L.Ed. 840 23

Statutes Cited.

Code of Alabama 1940, Recompiled 1958, Title 7, Rule 47 23
General City Code of Birmingham 1944, Section 1159 ..... 1, 2, 20, 31

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. ....

FRED L. SHUTTLESWORTH,

Petitioner,

vs.

CITY OF BIRMINGHAM, ALABAMA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT IN OPPOSITION TO JURISDICTION OF THE COURT.

Petitioner has not been deprived of right, privileges and immunities Secured by the Constitution of the United States.

STATEMENT IN OPPOSITION TO QUESTIONS PRESENTED.

I. Petitioner has not been denied due process of law by his conviction for violation of Section 1159 of the General City Code of Birmingham of 1944.

II. The application of the Birmingham parade ordinance to Petitioner did not deny him due process of law because said ordinance gave fair notice to Petitioner that he must secure a parade permit

STATEMENT OF CASE.[1]

Petitioner was convicted for violating Section 1159 of the General City Code of 1944 in the Recorders County of Birmingham, Alabama, on May 15, 1963 (R. 1). Petitioner appealed this conviction to Circuit Court for de novo trial on this same date (R. 1). In Circuit Court Petitioner was tried and convicted on a complaint charging that the Defendant (Petitioner) "did take part or participate in a parade or procession on the streets of the City without having secured a permit therefor, from the commission, contrary to and in violation of Section 1159 of the General City Code of Birmingham of 1944" (R. 2, 8, 9, 10).

Petitioner appealed his conviction to the Alabama Court of Appeals, where a split decision was rendered reversing the Circuit Court.[2] Respondent petitioned the Alabama Supreme Court for writ of certiorari, which resulted in a unanimous decision adopting and adding to the dissenting opinion of the Court of Appeals.[3]

This case tests the constitutionality of Section 1159 of the General City Code of Birmingham of 1944, which reads:

---

[1] The only record available to Respondent is the one submitted to the Alabama Court of Appeals. Thus, all references to record pages relate to this record.

[2] **Shuttlesworth v. City of Birmingham**, 43 Ala. App. 68, 180 So. 2d 114 (1965).

[3] **Shuttlesworth v. City of Birmingham**, 206 So. 2d 348, decided November 9, 1967.

"Sec. 1159. Parading.

"It shall be unlawful to organize or hold, or to assist in organizing or holding, or to take part or participate in any parade or procession or other public demonstration on the streets or other public ways of the city, unless a permit therefor has been secured from the Commission.

"To secure such permit, written application shall be made to the Commission, setting forth the probable number of persons, vehicles and animals which will be engaged in such parade, procession or other public demonstration, the purpose for which it is to be held or had, and the streets or other public ways over, along or in which it is desired to have or hold such parade, procession or other public demonstration. The Commission shall grant a written permit for such parade, procession or other public demonstration, prescribing the streets or other public ways which may be used therefor, unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused. It shall be unlawful to use for such purposes any other streets or public ways than those set out in said permit.

"The two preceding paragraphs, however, shall not apply to funeral processions."

This case does not involve a peaceful, orderly and non-obstructive walk on a city sidewalk. It involves a march beginning with fifty-two people in formation and with hundreds, possibly thousands of pseudo spectators on hand to view the procession.[4] The following summary of the testimony presented in the trial court demonstrates somewhat the character of the parade of April 12, 1963. Evidence of this identical parade can be found in the

---

[4] It cannot seriously be contended that this situation did not interfere with the rights of others to use the sidewalks.

record and decision in the case of **Walker v. City of Birmingham,** 388 U.S. 307, 87 S.Ct. 1824, in which case Rev. Shuttlesworth was one of the eight petitioners.

STATEMENT OF RELEVANT FACTS.

On April 12, 1963 about fifty-two persons, including Appellant Fred Shuttlesworth, left a church in the 1400th Block of 6th Avenue North and marched east in formation along 6th Avenue (R. 34, 35, 40, 43, 60, 62, 64). The formation consisted of twenty-six pairs of people about forty inches apart (R. 34, 36, 38, 60, 62). The marchers were singing and clapping their hands (R. 34, 46). The leaders of the group were Martin Luther King, A. B. Abernathy and Fred Shuttlesworth (R. 34, 37, 38). The leaders were dressed in dark shirt and blue jeans (R. 37, 43, 71, 72). The marchers proceeded east along 6th Avenue from the 1400th Block to 17th Street, where they turned south on 17th Street to 5th Avenue North, where they turned east on 5th Avenue. They were stopped in the 1700 Block of 5th Avenue (R. 34, 35, 44).

The Appellant, Fred Shuttlesworth, was not in the formation but walked beside the marchers (R. 36). He marched beside the paraders between the street and the sidewalk (R. 39, 65). Spectators lined the sidewalk on the side next to houses, or south side. The defendant walked on the north side of the marchers (R. 39, 40, 41). The Appellant encouraged the marchers (R. 46) and gave them instructions (R. 60, 61, 64, 65, 66, 67).

A large crowd of possibly over a thousand spectators (R. 44) lined the sidewalk and fell in behind the marchers at 15th Street (R. 44, 20). When Officer Higginbotham saw the marchers at 17th Street and 5th Avenue walking east on 5th Avenue, there were several hundred in the group (R. 20). The Appellant was with the organized group at this time (R. 21, 24). The marchers were stopped

on 5th Avenue between 17th and 18th Street by police officers (R. 24, 26). At the time the marchers were stopped, "there was a lot of loud hollering going on" and some people threw rocks (R. 28). No permit was issued by the City Clerk's office for a parade or procession on April 12, 1963 (R. 30). Petitioner Shuttlesworth testified but made no claim that a permit was ever applied for. That such was the case is also shown by the opinion of this Honorable Court in **Walker v. City of Birmingham**, 388 U.S. 307, 318, 87 S.Ct. 1824, 1830, a directly related case which involved the identical parade or demonstration, and Petitioner here is one of the petitioners in **Walker.**

ARGUMENT.

INTRODUCTORY STATEMENT.

In Reasons for Granting the Writ on Questions Presented, Petitioner rests his case upon alleged lack of due process, assigning two grounds:

I. The Court below mis-applied the United States Supreme Court's decision in **Walker v. City of Birmingham,** 388 U.S. 307, 87 S.Ct. 1824 (June 1967), **Reh. denied,** 88 S.Ct. 12, ... U.S. ... (Oct. 1967), and **Cox v. New Hampshire,** 312 U.S. 569 (1941), so as to bring them in conflict with **Lovell v. Griffin,** 303 U.S. 444 (1938), and **Staub v. Baxley,** 335 U.S. 313 (1958); and,

II. This Honorable Court should grant certiorari to determine if the decision of the Alabama Supreme Court conflicts with **Bouie v. Columbia,** 378 U.S. 347 (1964), because Petitioner was given no fair warning that he was required to get a permit: (A) because of the teaching of prior cases of the United States Supreme Court that he need not submit to a permit ordinance patently unconstitutional on its face; and (B) because he only participated in a peaceful, orderly and non-obstructive walk along the sidewalks of the City of Birmingham.

In Response to the Petition, Respondent denies existence of any sound reason for the granting of certiorari in this case, and denies there is any merit in any of the foregoing questions presented or reasons asserted by Petitioner to sustain a grant of certiorari by this Honorable Court. Respondent's brief follows the same general order in reply to Petitioner's contentions.

I.

There Is No Conflict Between Walker, et al. v. City of Birmingham, 388 U.S. 307, and Cox v. New Hampshire, 312 U.S. 569, as Opposed to Lovell v. Griffin, 303 U.S. 444, and Staub v. Baxley, 355 U.S. 313. The Alabama Supreme Court Did Not Mis-Apply or Wrongly Rely Upon the Walker Case in Its Decision Here. This Court Did Not Overlook Staub-Lovell When Deciding Walker.

A.

Pure Speech Cases Not Here Applicable.

It should be noted at the outset that the Petitioner here was also a petitioner in the **Wyatt Tee Walker case** decided by this Honorable Court on June 12, 1967, and rehearing denied on October 9, 1967 (88 S.Ct. 12). The present case is directly related to the **Walker case** in that both cases dealt with the same ordinance and the same (Good Friday-1963) procession, march, parade or demonstration in which Petitioner participated. Factually, they deal with the same activities and circumstances, although the charges and the trials were different. In **Walker** Petitioner was charged with and convicted of criminal contempt for having participated in the parade or march in violation of an injunction issued by the Alabama Circuit Court, Tenth Judicial Circuit. The punishment for this affront to the dignity of the court was five days in Jefferson County Jail and payment of a fine of $50.00. The present case arose from a conviction in Birmingham Recorders Court on a charge of having violated City Ordinance 1159, the same ordinance violation of which was enjoined in the **Walker case.**

We submit that this Honorable Court was fully aware of **Lovell** and **Staub** and gave due consideration to them when deciding **Walker v. City of Birmingham.** Petitioner

here, as one of petitioners in **Walker**, cited these same cases in their brief in the effort to support the same argument now being made that City Ordinance 1159 was unconstitutional on its face and in conflict with **Lovell v. Griffin** and **Staub v. Baxley**. The United States Solicitor-General also made this contention in an amicus curiae brief.[5] That this argument thus made and repeated was not overlooked by the Court is evident from the citation of one or both of these cases in the dissenting opinions.[6]

B.

Alabama Supreme Court Properly Followed Walker and Cox.

The Alabama Supreme Court properly applied and followed **Walker** and **Cox** in upholding Ordinance 1159 as valid when construed narrowly to achieve safety, comfort and convenience in the use of streets and public ways, including sidewalks. It also properly said, concerning the processing of applications by the City Commission (or other City Governing Body):

> "We also hold that under Sec. 1159 the Commission is without authority to act in an arbitrary manner or with unfettered discretion in regard to the issuance of permits. Its discretion must be exercised with uniformity of method of treatment upon the facts of each application, free from improper or inap-

---

[5] Mr. Justice Marshall, then United States Solicitor-General, filed a brief in behalf of the United States, as amicus curiae, in which was cited **Staub v. Baxley**; he also contended invalidity on its face of Ordinance 1159. Please see Amicus Curiae Brief filed in **Walker** on behalf of the United States, at pages 13, 14, 17 and 24.

[6] Mr. Chief Justice Warren cited **Staub v. Baxley**, 388 U.S. 329, Note 4, 87 S.Ct. 1836; Mr. Justice Douglas cited both cases to support a tenet of facial unconstitutionality, 388 U.S. 336, 87 S.Ct. 1840; Mr. Justice Brennan likewise cited both cases, 388 U.S. 344, 87 S.Ct. 1840, Note 6.

propriate considerations and from unfair discrimination. A systematic, consistent and just order of treatment with reference to convenience of public use of the streets and sidewalks must be followed." Shuttlesworth v. City of Birmingham—Pet. Br., Appdx, pg. 8(a); 206 So. 2d 348, 352.

The Alabama Supreme Court, in its **Shuttlesworth** opinion, made it clear a permit applied for pursuant to Sec. 1159 could not be denied solely upon the ground that a parade, procession or demonstration might tend to provoke disorderly conduct (Pet. Br., 8(a); 206 So. 2d 348, 351, 352).

That Court also adopted and approved the dissenting opinion of Judge Johnson, Alabama Court of Appeals, when he said:

> "(S)ection 1159 was not designed to suppress in any manner freedom of speech or assembly, but to reasonably regulate the use of the streets in the public interest . . ."[7]

And also said:

> "(T)he members of the Commission may not act as censors of what is to be said or displayed in any parade."

Judge Johnson's dissenting opinion strongly rested upon **Cox v. State of New Hampshire,** 312 U.S. 569, affirming **State v. Cox,** 91 N.H. 137, 16 A. 2d 508, together with the fundamental principle that a court in passing upon the validity of a City ordinance "has the duty not to strike it down as unconstitutional if by a reasonable construction it can be given a field of operation within constitutional

---

[7] The Supreme Court of Alabama approved and quoted at length from the opinion of Judge Johnson, Pet. Br., Appdx. 4a, 5(a); 206 So. 2d 348, 350, 351, ... Ala. ....

limits". **Shuttlesworth v. City of Birmingham**, 43 Ala. App. 68, 180 So. 2d 114, at page 144 (1965).

The above dissenting opinion of Judge Johnson of the Alabama Court of Appeals, which was adopted by the Alabama Supreme Court, relied upon **Cox v. New Hampshire**; but the Alabama Supreme Court also had the benefit of the statement of Mr. Justice Stewart, speaking for the court in **Walker v. City of Birmingham**, 388 U.S. 307, at 316, 317:

> "The petitioners, however, did not even attempt to apply to the Alabama Courts for an authoritative construction of the ordinance. Had they done so, those courts might have given the licensing authority granted in the ordinance a narrow and precise scope, as did the New Hampshire courts in Cox v. State of New Hampshire and Poulos v. State of New Hampshire, both supra. Cf. Shuttlesworth v. City of Birmingham, 382 U.S. 87, 91, 86 S.Ct. 211, 213, 15 L.Ed. 2d 176; City of Darlington v. Stanley, 239 S.C. 139, 122 S.E. 2d 207. **Here just as in Cox and Poulos, it could not be assumed that this ordinance was void on its face.**" (Emphasis ours.)

The Alabama Supreme Court, just as had Judge Johnson of the Alabama Court of Appeals, gave Sec. 1159 a narrow and precise construction, and as thus properly construed, it is unquestionably constitutional. **Cox v. State of New Hampshire**, 312 U.S. 569, 576; **Cox v. State of Louisiana**, 379 U.S. 536, 558. In fact, we do not find in the petition or supporting brief any contention that Sec. 1159 is invalid as thus construed. Rather Petitioner has chosen to infer that this Honorable Court did not mean what it said in its statement last above quoted: "Here, just as in Cox and Poulos, it could not be assumed this ordinance was void on its face."

As we have heretofore observed, this Honorable Court did not make this statement in an unguarded moment,

overlooking **Staub v. Baxley**, 355 U.S. 313 (1958), and **Lovell v. Griffin**, 303 U.S. 444 (1938). Nor did the Alabama Supreme Court wrongly construe the opinion of this Honorable Court in **Walker**; nor did it wrongly rely upon this Honorable Court's opinion in that case.

We submit that the doctrine of Staub and Lovell has no application to this case, for several reasons. First, we call attention to the fact that these cases involve freedom of speech or freedom of the press in its purest form. But to the contrary, in this case we are dealing with a mass demonstration, parade or procession on the public streets and sidewalks which directly led to mob violence upon the public streets and ways endangering the safety of the demonstrators, or paraders, as well as other citizens of Birmingham. **Walker, et al v. City of Birmingham**, 388 U.S. 307, 310, 311, 89 S.Ct. 1824, 1826, 1827; **Testimony of Officer Higginbotham** (Ala. Ct. App., R. 28).

As City Police Officer R. N. Higginbotham testified:

> "At the time of arrest, there was a lot of hollering going on, there was a lot of rocks being thrown, who threw them I don't know. I don't have any idea who threw the rocks, but I know there was a lot of rock throwing. There was a lot of dodging going on" (Ala. Ct. of Appeals Record, page 28).

Mr. Justice Stewart, speaking for the Court in **Walker, et al. v. City**, 388 U.S. 307, 310, 87 S.Ct. 1824, 1826, after discussing the issuance and service of the writ of injunction upon eight petitioners and the press release issued the next day at Noon, April 10, 1963, by four of the petitioners in that case, including, we interpolate, Rev. F. L. Shuttlesworth, pronouncing their intention to violate the injunction, describes the Good Friday parade, procession or demonstration and the events leading up to it:

> "That night a meeting took place at which one of petitioners announced that 'injunction or no injunc-

tion we are going to march tomorrow'. The next afternoon, Good Friday, a large crowd gathered in the vicinity of Sixteenth Street and Sixth Avenue North in Birmingham. A group of about 50 or 60 proceeded to parade along the sidewalk while a crowd of 1,00 to 1,500 onlookers stood by 'clapping and hollering and (w)hooping'. Some of the crowd followed the marchers and spilled out into the street. At least three of petitioners participated in this march.''—including Rev. F. L. Shuttlesworth, we interpolate (388 U.S. 310, 87 S.Ct. 1826).

Mr. Justice Stewart in the above mentioned opinion in **Walker** also commented upon the fact that the petitioners there had organized and held mass street parades on April 12th and April 14th, 1962, without any previous effort on their part to have the injunction dissolved, modified, or any attempt to secure a parade permit in accordance with its terms.[8]

The Court, in **Walker**, then made clear how different is the status of one who violates a statute or ordinance placing restrictions upon pure speech and one who violates one properly regulating the use of streets or sidewalks:

walks:

''(W)e have consistently recognized the strong interest of state and local governments in regulating the use of their streets and other public places. Cox v. State of New Hampshire, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049; Kovaco v. Cooper, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513; Poulos v. State of New Hampshire, 345 U.S. 395, 73 S.Ct. 760, 97 L.Ed. 1105;

---

[8] The Court's opinion reads: "We are asked to say that the Constitution compelled Alabama to allow petitioners to violate this injunction, to organize and engage in these mass street parades and demonstrations without any previous effort on their part to have the injunction dissolved or modified, or any attempt to secure a parade permit in accordance with its terms" (388 U.S. 310, 87 S.Ct. 1826).

Adderly v. State of Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed. 2d 149. When protest takes the form of mass demonstrations, parades or picketing on public streets or sidewalks, the free passage of traffic and the prevention of public disorder and violence become important objects of legitimate state concern. As the Court stated in Cox v. Louisiana, 'We emphatically reject that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by patrolling, marching and picketing on streets and highways as those Amendments afford to those who communicate ideas by pure speech.' 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed. 2d 471."

The United States Supreme Court has also distinguished between statutes or ordinances regulating pure speech and those concerned with parading, marching or picketing in holding that the clear and present danger test, if applicable to cases involving pure speech, certainly could not be applied to parading, picketing or marching or demonstrating before a court house, **Cox v. Louisiana**, 379 U.S. 559, 566, 567, 85 S.Ct. 476, 481.

The conduct of petitioner here enmeshed as it was in a conspiracy to provoke, or at least was a part of a "Movement" intent on provoking, and which did provoke numerous arrests for marching or parading or demonstrating in violation of Section 1159, which marching, parading or demonstrating finally resulted in a taking over of the City streets from sidewalk to sidewalk and in damage to property and injury to one or more persons at the hands of an angry mob gathered by the "Movement". **Walker, et al. v. City of Birmingham**, 388 U.S. 307, 310, 311, 87 S.Ct. 1824, 1826, 1827.

In view of the foregoing, we respectfully submit there is no room for invocation of the doctrine of the **Staub** and

Lovell cases. Whether these cases are dead or not dead is not an issue in this case. Whatever scope of operation they may or may not have is not here relevant. By his own conduct and that of his co-conspirators or associates in the "Movement", they have voluntarily placed themselves beyond the application of their doctrine.

However, we believe those cases never had any relevancy to this case because the ordinance is not unconstitutional on its face and this Honorable Court so held in **Walker, et al. v. City of Birmingham,** when it likened this Section 1159 to those statutes and ordinances involved in **Cox v. State of New Hampshire,** 312 U.S. 569, and **Poulos v. State of New Hampshire,** 345 U.S. 398, 73 S.Ct. 760.

A glance at the **Cox case**[9] shows that Cox was convicted in a criminal proceeding for violating a New Hampshire statute at least as broad if not broader than Sec. 1159. The narrow and precise construction of the statute by the State of New Hampshire Supreme Court was accepted by the United States Supreme Court to sustain the statute

---

[9] The statute construed in this case was construed for the first time by the New Hampshire Supreme Court after Cox was convicted for violating it. He ultimately appealed to the United States Supreme Court, where a unanimous Court affirmed his conviction. The New Hampshire statute involved appears in **Cox v. State of New Hampshire,** 312 U.S. 571, 572, 61 S.Ct. 763, 764. Sec. 2 thereof is quoted in the body of the opinion: "No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any grounds abutting thereon, shall be permitted, unless a special license therefor shall first be obtained from the selectmen of the town or from a licensing committee for cities hereinafter provided for." Secs. 3, 4 and 5 of this Act appear in Footnote 1, 312 U.S. 573, 61 S.Ct. 764. These sections provide for the creation of the Licensing Board, for the written application for the permit specifying the date and hour of the parade or procession, and for the payment of a license fee for each parade or procession up to $300 and a penalty for its violation of a monetary fine not to exceed $500.

and affirm the conviction of Cox. That the Court did not then (1941) overlook the pure speech cases, such as **Staub** and **Lovell**, is attested by the fact that the latter case was cited with favor by the Court which recognized that distributing circulars or carrying signs should be distinguished from conducting a parade or procession in determining the propriety of reasonable regulation by a permit or licensing system on the part of local municipalities in the discharge of their duty to conserve the public convenience in the use of their streets and sidewalks. Please see **Cox v. New Hampshire**, 312 U.S. 574-576, 61 S.Ct. 764, 765, to which we now turn for fuller comparison with this case.

C.

The New Hampshire Cox Cases (A Comparison With This Case).

Petitioner stands convicted of violating Section 1159 of the General City Code of Birmingham of 1944, which is set out in full in Respondent's Statement of Case. Section 1159 proscribes participating in a parade or procession without permit. The same conduct is proscribed by the enactment involved in **Cox.** Each involved a conviction for violation by the respective petitioner of a criminal statute or ordinance construed by the respective Supreme Courts of New Hampshire and Alabama narrowly and precisely after arrest and conviction.

This Court, in the case of **New Hampshire v. Cox**, 312 U.S. 569, 61 S.Ct. 762, affirmed the State court's decision in **State v. Cox**, 16 A. 2d 508, in the only case decided by this Court that we found that is squarely in point with this case. It is readily apparent from reading these two cases that both the conduct of petitioner here and the enactment involved herein are remarkably similar to the conduct and enactment involved in the New Hampshire

case. In both instances, the parade or procession took place on the sidewalk portion of the street. In neither instance was an effort made to secure a permit or license for the parade. In both instances the parade or procession was a prearranged affair. In **State v. Cox** the court determined that the defendants understood that under the statute a permit was required. No serious contention could be made in this case that Petitioner did not understand that a permit was required, and **Walker v. City of Birmingham**, 388 U.S. 307, 315, 87 S.Ct. 1824, 1829 (1967), involving this same parade, leaves no doubt on this score. In view of the discussion next hereinafter set out, lifted from **Cox v. State**, 16 A. 2d 508, there can be no doubt but that Petitioner engaged in a parade or procession.

> "The contention that the defendants were not guilty under the terms of the statute has no merit. As the complaints charged, they 'participated in a certain parade or procession.' A succession of persons substantial in number walked in formal march with signs and placards. This was a parade or procession, such as is required by the statute to be licensed. It was a march in formation, and its advertising and informatory purpose did not make it otherwise. Its single file order did not destroy its character as a procession, nor did its purpose to publish information take it out of the purview of the statute. Each group was an organized unit under leadership and direction. It is immaterial that its tactics were few and simple. It is enough that it proceeded in ordered and close file as a collective body of persons on the city streets. Whether it could be called an assembly, being in motion rather than stationary, is also immaterial. If it might be, it remained a parade or procession as the statute employs the words. Clearly the defendants took part in a parade or procession without a license therefor."

With only slight and completely immaterial modifications, the above language could quite accurately be applied to this case.

On appeal this Court, in **Cox v. New Hampshire**, 312 U.S. 569, 61 S.Ct. 762, agreed with the State court's definition of a parade or procession, saying:

> "There appears to be no ground for challenging the ruling of the state court that appellants were in fact engaged in a parade or procession upon the public streets. As the state court observed: 'It was a march in formation, and its advertising and informatory purpose did not make it otherwise . . . . It is immaterial that its tactics were few and simple. It is enough that it proceeded in ordered and close file as a collective body of persons on the city streets.' "

Thus, it would appear that the facts and issues of this case are in all material respects identical to those in the **New Hampshire Cox case.** The only differences we note are that in this case there is evidence of a disorder or breach of the peace and the use of pseudo spectators to take over the vehicular portion of the street also (please see Ct. of Appeals, R. 28, and **Wyatt Tee Walker et al. v. City of Birmingham**, 388 U.S. 307, 310, 311, 87 S.Ct. 1824, 1826, 1827), and that Section 1159 does not place a monetary charge on this exercise of free speech as was authorized in the New Hampshire statute.

Cox v. New Hampshire, 312 U.S. 569, also established that parades or processions on the city streets could be regulated by permit or license, even though such conduct fell within liberties secured by the First-Fourteenth Amendments (312 U.S., at page 575):

> "(2-4) Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.

The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and discussion of public questions immemorially associated with resort to public places. Lovell v. Griffin, 303 U.S. 444, 451, 5 S.Ct. 666, 668, 82 L.Ed. 949; Hague v. Committee for Industrial Organization, 307 U.S. 496, 515, 516, 59 S.Ct. 954, 963, 964, 83 L.Ed. 1423; Schneider v. State of New Jersey, 308 U.S. 147, 160, 60 S.Ct. 146, 150, 84 L.Ed. 155; Cantwell v. Connecticut, 310 U.S. 296, 306, 307, 60 S.Ct. 900, 904, 84 L.Ed. 1213, 128 A.L.R. 1352."

In **Cox v. Louisiana**, 379 U.S., at page 554, we find the same thought expressed:

"The constitutional guarantee of liberty implies the existence of an organized society maintaining public

order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection."

As recently as June 12, 1967, this Honorable Court reapproved the rule set out above from the two **Cox cases** in the case of **Wyatt Tee Walker, et al. v. City of Birmingham**, 87 S.Ct. 1824, 388 U.S. 307, **Rehearing denied**, October 9, 1967, 88 S.Ct. 12.

In **Cox v. New Hampshire**, 312 U.S. 576, this Honorable Court discussed the value of a permit requirement as a means to properly police parades and processions:

> "The obvious advantage of requiring application for a permit was noted as giving the public authorities notice in advance so as to afford opportunity for proper policing. And the court further observed that in fixing time and place, the license served to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder."

It thus appears that no absolute right to use the streets for parades or processions exists, even though such parades or processions involve free speech. It also seems clear that a permit or license requirement is a valid as well as appropriate means of regulating parades and processions.

D.

Section 1159 Is Valid on Its Face.

Here we elaborate a point heretofore briefly mentioned. Section 1159 has been set out supra under the heading "Statement of the Case". This enactment was construed in this case by the Alabama Supreme Court, 206 So. 2d 348, and Petitioner's Brief, Appdx, pages 1a-16a. In its construction the Alabama Supreme Court adopted Judge Johnson's construction set out in his dissenting opinion in the case of **Shuttlesworth v. City of Birmingham**, 43 Ala. App. 68, 180 So. 2d 114 (1965), Petitioner's Brief, Appdx, pages 17a-80a:

> " 'I think it is obvious that this ordinance—Section 1159—was not designed to suppress in any manner freedom of speech or assembly, but to reasonably regulate the use of the streets in the public interest. It does not seek to control what may be said on the streets, and is applicable only to organize (sic) formations of persons, vehicles, etc., using the streets and not to individuals or groups not engaged in a parade or procession. The requirement that the applicant for a permit state the course to be travelled, the probable number of persons, vehicles and animals, and the purpose of the parade is for the purpose of assisting municipal authorities in deciding whether or not the issuance of a permit is consistent with traffic conditions. Thus, the required information is related to the proper regulation of the use of the streets, and the fact that such information is required indicates that the power given the licensing authority was not to be exercised arbitrarily or for some purpose of its own. The requirement that the applicant state the purpose of the parade or procession does not indicate an intent to permit the Commission to act capriciously or arbitrarily. The purpose may have a

bearing on precautions which should be taken by municipal authorities to protect parades or the general public.

" 'Section 1159, supra, provides that the Commission shall issue a permit unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience requires that it be refused. I do not construe this as vesting in the Commission an unfettered discretion in granting or denying permits, but in view of the purpose of the ordinance, one to be exercised in connection with the safety, comfort and convenience in the use of the streets by the general public. The standard to be applied is obvious from the purpose of the ordinance. It would be of little or no value to state that the standard by which the Commission should be guided is safety, comfort and convenience of persons using the streets, and, due to varying traffic conditions and the complex problems presented in maintaining an orderly flow of traffic over the streets, it would be practically impossible to formulate in an ordinance a uniform plan or system relating to every conceivable parade or procession. The members of the Commission may not act as censors of what is to be said or displayed in any parade. If they should act arbitrarily, resort may be had to the courts. It is reasonable to assume from the facts in this case that the Commission would have granted appellant a permit to engage in the parade if such permit had been sought. A denial would have been warranted only if after a required investigation it was found that the convenience of the public in the use of the streets at the time and place set out in the application would be unduly disturbed.' "

The validity of the above construction finds complete support in the case of **State v. Cox**, 91 N.H. 137, 16 Atl.

2d 508, affirmed **Cox v. New Hampshire**, 312 U.S. 569, 61 S.Ct. 762, and in the case of **City of Darlington v. Stanley**, 239 So. C. 139, 122 S.E. 2d 207, which constructions this Honorable Court approved in **Walker v. City of Birmingham**, 388 U.S. 307, 87 S.Ct. 1824, at page 1830:

> "The petitioners, however, did not even attempt to apply to the Alabama courts for an authoritative construction of the ordinance. Had they done so, those courts might have given the licensing authority granted in the ordinance a narrow and precise scope, as did the New Hampshire courts in Cox v. State of New Hampshire, and Poulos v. State of New Hampshire, both supra. Cf. Shuttlesworth v. City of Birmingham, 382 U.S. 87, 91, 86 S.Ct. 211, 213, 15 L.Ed. 2d 176; City of Darlington v. Stanley, 239 S. C. 139, 122 S.E. 2d 207. Here, just as in Cox and Poulos, it could not be assumed that this ordinance was void on its face."

Here the Alabama Supreme Court has "given the licensing authority granted in the ordinance a narrow and precise scope, as did the New Hampshire courts in Cox v. State of New Hampshire and Poulos v. State of New Hampshire, both supra."

This Honorable Court obviously recognized the principle that a statute or ordinance should not be stricken down by a court when it may reasonably be construed to make it valid, and that the State Appellate Courts first have opportunity to construe a state ordinance, which construction is binding upon this Honorable Court when deciding **Walker v. City of Birmingham**, 388 U.S. 307, 87 S.Ct. 1824, application for rehearing denied on October 9, 1967, 88 S.Ct. 12, when this Honorable Court said:

> "The petitioners, however, did not even attempt to apply to the Alabama Courts for an authoritative construction of the ordinance. Had they done so,

> those courts might have given the licensing authority granted in the ordinance a narrow and precise scope, as did the New Hampshire courts in Cox v. State. . . . Here, just as in Cox and Poulos, it could not be assumed that this ordinance was void on its face."

The Supreme Court of Alabama thus properly relied upon **Walker, Cox** and **Poulos** in giving Section 1159 a narrow construction. The effect of this construction is that the ordinance now must be read as if it had been amended to include the construing language of the Alabama Supreme Court opinion. **Winters v. State of New York,** 333 U.S. 507, 514, 68 S.Ct. 665, 669, 92 L.Ed. 840.

Nor can Petitioner properly complain that he had no way to judicially review denial of a parade permit. In the first place, he never applied for such a permit, despite the injunction restraining him and his confederates from participating in such a mass parade without a permit. Secondly, had he made an application and had it been denied, he could have immediately presented a motion to dissolve the injunction on that ground, with expedited review by the Alabama Supreme Court. **Walker, et al. v. City of Birmingham,** 388 U.S. at 318-319, 87 S.Ct. 1830-1831. Moreover, the remedy of mandamus was also available to quickly test any improper denial of a parade permit. **Shirey v. City Board of Education of Fort Payne,** 266 Ala. 185, 94 So. 2d 758; **Poulos v. State of New Hampshire,** 345 U.S. 395, 73 S.Ct. 760. Expedited review by the Supreme Court of Alabama is provided in mandamus cases. See Supreme Court Rule 47, Title 7, Appendix, Code of Alabama 1940, Recompiled 1958.[10]

---

[10] Rule 47 reads: "Appeals Involving Extraordinary or Remedial Writs. In all appeals involving extraordinary or remedial writs, these rules shall apply unless the court orders otherwise. In appeals from judgments or decrees rendered in habeas corpus, injunction, certiorari, supersedeas, quo warranto, mandamus, prohibition, and appointing or refusing to appoint a receiver proceeding, the appellant within five days after the appeal has

II.

There Is No Merit in the Petition for Certiorari on the Claim of Conflict With Bouie v. Columbia, 378 U.S. 347 (1964), Because of Petitioner's Contention He Had No Fair Warning He Was Required to Secure a Parade Permit (A) Because of the Alleged Teachings of Prior Decisions of This Court, and (B) Because He Only Participated in a Peaceful, Orderly and Unobstructive Walk Along the Sidewalks of Birmingham.

A.

Petitioner Had Fair Warning That He Would Be Punished When He Violated Section 1159.

We have heretofore discussed at some length the case of **Cox v. State of New Hampshire**, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941), decided some twenty-two years before Petitioner and his colleagues and followers openly declared their intention to carry on a "Movement" in the City of Birmingham to blatantly defy and violate a state

---

been taken, or the appellee within five days after service of the notice of appeal may petition this court to reduce the time for the filing of briefs in the cause and to specify an earlier date for submission of the appeal. Adversary counsel shall be given three days' notice of the date and time of the proposed presentation of the petition to the court. Upon presentation of the petition, the court may prescribe time limitations for the filing of briefs and for submission which are less than otherwise prescribed by the rules, if the court is of the opinion that the normal time allowed by these rules for filing of briefs and submission of the appeal would work injustice, or the appeal involves a question of great public interest affecting the public good and requires an earlier filing of briefs and submission of the appeal. When the court is not in session, such petition may be presented to and acted upon by the senior accessible member of the court. The provision of this rule providing for the earlier filing of briefs and earlier submission of a cause shall not apply in any case where the appellant, because of uncertainty as to his remedy, seeks relief by mandamus as an alternative to his appeal, nor to appeals in cases where the injunctive relief involved was merely incidental to other relief sought."

court injunction prohibiting the violation of Section 1159 by participating in a mass parade or demonstration, and also openly declared in press release and public meeting their intention to violate it and such other laws as they deemed to be unjust. **Walker v. City of Birmingham,** App. B, 388 U.S. 307, at 323, 324, 87 S.Ct. 1824, at 1833; 1834. The teaching of **Cox v. New Hampshire** is that cities have the right and even the duty to regulate in a reasonable way and conserve for the safety, comfort and convenience of its citizens the use of its streets and sidewalks by requiring those who use them to obtain a permit from the City before conducting thereupon a parade, procession or demonstration. The further teaching of this case is that a broad statute or ordinance properly may be narrowly and precisely construed by the State courts to give such statute or ordinance a field of operation that is consistent with the guarantees of the First and Fourteenth Amendments and that a violator may be punished for his flouting of the law, even though the narrowing language is adopted after his violation. These teachings should have been mastered by Petitioner, who had opportunity to do so for a period of twenty-two years.

Poulos v. State of New Hampshire, 345 U.S. 395, 73 S.Ct. 760 (1953), involved a different application of the same statute dealt with in **Cox.** The latter case concerned parading without a permit, while **Poulos** considered the right to hold an open-air religious service in a park without a permit. In this case Poulos made application for a permit, which was wrongfully denied by the City. Poulos held the services without taking any legal steps to compel issuance of a permit. He was arrested and convicted of violation of the permit requirement of the ordinance. On appeal to the New Hampshire Supreme Court, it affirmed the holding of the Superior Court that the ordinance was valid on its face but the City arbitrarily denied the permit.

This entourage was involved in the violence that resulted (Ala. Ct. App., R. 26).

This technique of the "Movement", using only relatively few paraders accompanied by a mass of "followers" who actually engaged in the violence, was not new. It had been previously used in the Albany, Georgia Movement in 1962, a year earlier. Please see **Kelly v. Page**, 335 F. 2d 114 (U.S. Ct. of Appeals-5th Circuit):

> "The last big demonstration was on July 24, 1962. There were only forty marchers but from 3,000 to 4,000 spectators participated in the ensuing confusion and disorder. . . . There was testimony that Negro spectators on both sides of the street would run out into the street and spit at the officers."

The argument that petitioner's conduct is protected by a claim that he was not fairly warned of its consequences when he participated in the alleged peaceful, orderly and non-obstructive walk along the sidewalks of Birmingham is without merit. The inference that he did not know a permit was required for such a parade, march or demonstration is refuted by his and his colleague's open defiance of the injunction and the ordinance and their obvious awareness that those participating would be arrested for parading without a permit, which they failed or refused to apply for. Please see **Cox v. State of New Hampshire**, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049, cited with approval by this Honorable Court in **Walker et al. v. City of Birmingham**, 388 U.S. 307, 87 S.Ct. 1824. In **Cox**, as we have previously noted, the parade was entirely upon the sidewalk and was peaceful. Whereas in this case the formal part of it was upon the sidewalk, but the technique here employed of using an accompanying mob which took over the street and engaged in violence was different and even more deserving of punishment than was the case in **Cox**. That this was a part of a pre-

arranged plan is even more evident by testimony that one of the leaders was seen "organizing members of the crowd in formation" in one of the two parades of April 12th and 14th. **Walker v. City of Birmingham**, 388 U.S. 311, 87 S.Ct. 1827.

Before closing, we advert to an additional reason the petition is without merit. The consequences of Petitioner's failure to apply for a permit leaves him without standing to attack the constitutionality of Section 1159.

Under Respondent's authorities heretofore cited, there is no room to question the facial constitutionality of Section 1159. This point is as well established as the doctrine of stare decisis will permit in the absence of a specific determination in regard to Section 1159. Thus we reach a stage in this argument where the absence of standing of petitioners to question the validity of Section 1159 is raised. The rule in this regard is stated in the case of **Smith v. Cahoon**, 283 U.S. 553, 51 S.Ct. 582:

> ". . . when a statute, valid upon its face, requires the issue of a license or certificate as a condition precedent to carrying on a business or following a vocation, one who is within the terms of the statute, but has failed to make the required application, is not at liberty to complain because of his anticipation of improper or invalid action in administration."

The rule cited above should suffice to demonstrate that Petitioner's anticipation of improper action on the part of the City Commission cannot be raised at this time. It should be noted that this same rule was recognized as applicable in the area of free speech in both the **Lovell** and **Staub** cases, supra.

The conviction, however, was allowed to stand because Poulos had not sought the aid of the courts in a mandamus or certiorari proceeding to obtain the permit. The United States Supreme Court affirmed, and in so doing rejected Poulos' argument that the ordinance violated freedom of speech and of religion because: (1) a permit or license to hold a worship service in Goodwin Park could not be required by the City because such requirement would abridge such constitutionally protected freedoms of speech and assembly; and (2) if a permit or license could be required, the arbitrary refusal of the City to issue said permit, coupled with the New Hampshire holding that he must first seek relief from New Hampshire Courts in certiorari or mandamus proceedings before holding the services in the park, would abridge these constitutional rights in that they would delay his right to exercise such rights; and (3) in this situation he was deprived of due process of law. The New Hampshire Supreme Court had rejected these arguments and affirmed his conviction. The United States Supreme Court came to the same conclusion and affirmed his conviction, after considering his constitutional claims, including that of lack of due process. The firm base of this decision was the validity on its face of the ordinance in question on the principle that the narrowing construction of the New Hampshire Supreme Court had effect as though written into the ordinance itself. The argument of Poulos that delay caused by requiring recourse to the state courts deprived him of his constitutional rights, including lack of due process, was pointedly rejected:

> "The valid requirements of license are for the good of applicants and the public. It would be unreal to say that such official failures to act in accordance with state law, redressable state judicial procedures, are state acts violative of the Federal Constitution. Delay is unfortunate but the expense and annoyance of liti-

gation is a price citizens must pay for life in an orderly society where the rights of the First Amendment have a real and abiding meaning. Nor can we say that the state's requirement that redress must be sought through appropriate judicial procedure violates due process." **Poulos v. State of New Hampshire**, 345 U.S. 395, 409, 73 S.Ct. 760, 768, 769.

We recognize **Poulos** came closer to a free speech case than either **Walker** or **Cox** because it had to do with speech in a worship service in a public park. But a number of Supreme Court cases have placed parading, picketing and demonstrating on a public street, sidewalk or way in a much less preferred category than pure speech in regard to the right of municipal governments to regulate them. **Cox v. State of Louisiana**, 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed. 2d 471; **Cox v. State of New Hampshire**, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049; **Adderly v. State of Florida**, 385 U.S. 39, 87 S.Ct. 242; **Walker, et al. v. City of Birmingham**, 388 U.S. 307, 315-316, 87 S.Ct. 1824, 1829-1830 (1967).

Harry Kalven, Jr., of the University of Chicago Law School Faculty, in his essay, "The Concept of the Public Forum, 1965 Supreme Court Review", pages 1-32, discusses at length the question of regulation of activities that may conflict with Freedom of Speech and Freedom of Assembly. At page 28 of his essay, Professor Kalven mentions **Lovell v. Griffin** (1937) as the first of the public forum cases, and in which case complete freedom of speech from any sort of prior restraint was discussed. He points out that the Blackstone approach to the problem was that freedom of speech was simply absence of prior restraint. However, Professor Kalven then observes:

> "(T)here is little, if anything, left today to the idea that prior licensing is bad per se, regardless of the criteria used. It now appears that the his-

torical reaction was against general licensing with unlimited or unspecified grounds for exercise of discretion. The recent Times Film case has definitively put to rest any question whether all prior restraints are necessarily bad. **And, in any event, Cox v. New Hampshire stands as a strong and healthy precedent for use of prior restraint, at least in regulating the public forum.**" (Emphasis ours.) Supreme Court Review 1965, pages 28-29.

Petitioner cannot sustain his position asserted in II(A) that this Honorable Court is to blame for his violation of Ordinance, Section 1159, and that he was not given fair warning. This does not square with his and his colleagues avowal of intention to defy and violate the injunction restraining them from violating this ordinance and their open declaration of intention to violate it and all laws they considered unjust. Nor does his claim of unawareness that a permit was required for marching or walking on the sidewalk gain in credibility when contrasted with the closing statement in the press release: "We risk this critical move with an awareness of the possible consequences involved." **Walker v. City of Birmingham**, 388 U.S. 307, at 824, 87 S.Ct. 1824, at 1834.

In speaking of the violation of the injunction by way of violating Section 1159, Mr. Justice Stewart, in **Walker**, dealt with the question of awareness of petitioners of the consequences of their acts: "The injunction in all events clearly prohibited mass parading without a permit, and the evidence shows that petitioners fully understood that prohibition when they violated it." 388 U.S. 317, 87 S.Ct. 1830.

B.

Petitioner's Conduct Was a Violation of Section 1159; Bouie v. Columbia Is Not Involved.

Petitioner has cited **Bouie v. Columbia,** 378 U.S. 347, 87 S.Ct. 1697, which related to a conviction for violation of a trespass statute that was construed by South Carolina to give it a wider scope than was apparent on its face. In a very real sense, no warning was given because the statute was expanded by judicial construction. It has no relevancy here. This case is governed by the rule of **Shuttlesworth v. City of Birmingham,** 382 U.S. 87, 91, 86 S.Ct. 212, 213, where the ordinance was restricted in scope rather than enlarged. Please also see the concurring opinion of Mr. Justice Brennan, 382 U.S. 99, 100, 86 S.Ct. 217, 218. More than that, here the participants were aware of the fact that if they violated the injunction by the marches, walks, parades or demonstrations which they promoted and participated in on April 12, 1963 and April 14, 1963, without a permit, they would have to go to jail. In fact, at meetings held by them they made calls for volunteers to "walk" and go to jail. **Walker v. City of Birmingham,** 388 U.S., at page 311, 87 S.Ct. 1827. On the night before the April 12th demonstration, at one of these meetings, one of the **Walker** petitioners, all leaders in the "Movement", "announced that (i)junction or no injunction we are going to march tomorrow." 388 U.S., at 310, 87 S.Ct., at 1826.

Moreover, the conduct of petitioner on April 12th cannot be isolated from the violent consequences of the demonstration simply because "fifty or sixty people proceeded to parade along the sidewalk" and of the thousand or fifteen hundred gathered around the church from which they started "some of the crowd followed the marchers and spilled out into the street." It was a mass parade. **Walker,** 388 U.S., at 310, 311, 317, 87 S.Ct., at 1827, 1830.

CONCLUSION.

We respectfully urge this case is governed by **Cox, Poulos** and **Walker** and request denial of the petition for writ of certiorari.

.....

J. M. BRECKENRIDGE,

.....

EARL McBEE,

.....

WILLIAM C. WALKER,
600 City Hall,
Birmingham, Alabama,
Attorneys for Respondent.